

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCUS DEAN,

Defendant.

CR 06-08-H-CCL

ORDER

The Court referred the Petition for Revocation (Doc. 59) for hearing, findings of fact, and recommendation to Magistrate Judge Johnston by order filed on July 8, 2015 (Doc. 61).¹ Pending now before the Court is the Report of Findings & Recommendations (“F&R”) filed by Magistrate Judge Johnston on July 13, 2015 (Doc. 70). Defendant has waived the 14-day objection period.

¹ See 18 U.S.C. §3401(i).

I. Background

The following facts are taken from the F&R:

1. Marcus Dean violated Standard Condition 7 of his supervised release by failing to abstain from the consumption of methamphetamine on July 3, 2015.
2. Marcus Dean violated Special Condition 1 of his supervised release by failing to appear for a scheduled urinalysis test on July 3, 2015.

(Doc. 70 at 4.) At the revocation hearing, Defendant Dean admitted that he violated the two conditions as alleged by the petition. (Doc. 70 at 3.)

In the F&R, Judge Johnston recommends that this Court find the Defendant has violated two conditions of his supervised release and sentence Defendant Dean to a term of imprisonment of two weeks, with a lifetime term of supervised release to follow under the same conditions of supervision as previously imposed. Judge Johnston recommends that this Court order Defendant to remain in custody until July 20, 2015.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1) this Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” The district judge must review the magistrate judge’s findings and recommendations de novo if objection is made. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). If an objection is made, the court reviews de novo only the portion to which the objection was made, the remainder is reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). No objection having been made, this Court reviews the F&R accordingly.

III. Discussion

This is Defendant’s first revocation proceeding. Defendant’s violation grade is C, his criminal history category is III, and his Chapter 7 Policy Guideline Range is 5 to 11 months imprisonment. Defendant is required to serve a term of lifetime supervision. The government requested a departure from the guideline

range, and the Defendant requested a custody sentence of one month. Magistrate Judge Johnston finds that sufficient mitigating circumstances exist to vary downward from the guidelines to a custody sentence of two weeks. Defendant self-reported his use of methamphetamine and failure to appear for a scheduled urinalysis test, but there have been no other violations since his release from prison on March 13, 2015.

IV. Revocation Determination and Sentence

The Court therefore finds by a preponderance of the evidence that Defendant violated two conditions of his supervised release. *See* 18 U.S.C. § 3583(e)(3). Defendant's supervised release should be, and hereby is, revoked, and Defendant Dean should be resentenced.

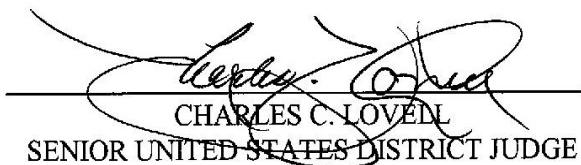
The Magistrate Judge notified the parties that the U.S.S.G. Chapter 7 guideline range is 5-11 months incarceration, following by a lifetime term of supervised release. Neither counsel objected to these findings, and this Court agrees that the guideline range and supervised release findings made by the

Magistrate Judge are correct.

Having considered the recommended sentence, the requests of counsel for the Defendant and the government, and the section 3553(a) statutory sentencing factors as made applicable by 18 U.S.C. § 3583(e), and all the record in this case, the Court finds that the appropriate sentence should be as recommended by Magistrate Judge Johnston: a custody term of two weeks imprisonment followed by a lifetime term of supervised release on the same conditions imposed previously by this Court. The Court adopts Magistrate Judge Johnston's Findings & Recommendations in full and shall enter Judgment accordingly.

The Clerk shall send a copy of this order to Magistrate Judge Johnston and the United States Probation Office.

Done and dated this 15th day of July, 2015.



CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT JUDGE